

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM M. FERNANDES,
Plaintiff,

v.

CIVIL ACTION NO.
15-12580-ADB

ANDRE BRIOTTE, JR., ET AL.,
Defendants.

**MEMORANDUM AND ORDER RE:
PLAINTIFF'S NOTICE OF DISMISSAL**

October 19, 2015

BURROUGHS, U.S.D.J.

On September 19, 2015, plaintiff William M. Fernandes filed a notice to voluntarily dismiss this action without prejudice under Fed.R.Civ.P. 41(a) ("Rule 41(a)") or Fed.R.Civ.P. 41(c). (Docket Entry # 88).¹ Rule 41(a)(1)(A)(i) gives a plaintiff the right to dismiss an action "without a court order by filing . . . a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." Fed.R.Civ.P. 41(a)(1)(A)(i). Although a number of defendants filed motions to dismiss (Docket Entry ## 67, 68, 72, 77), such motions do not extinguish a plaintiff's right to voluntarily dismiss an action. See Hall v. Mortgage Electronic Registration Systems, Inc., and GMAC Mortgage, LLC, 2001 WL 820460, at *1 (D.N.H. March 4, 2011)

¹ The motion was docketed on October 13, 2015.

(because "'motion to dismiss under Fed.R.Civ.P. 12(b) (6) is neither an answer nor a motion for summary judgment, its filing generally does not cut off a plaintiff's right to dismiss by notice'" (quoting In re Bath & Kitchen Fixtures Antitrust Litigation, 535 F.3d 161, 166 (3rd Cir. 2008)); see also Adwalls Media LLC v. Adwalls, LLC., John W. Rowe and Jeffrey D. Zimmer, 2013 WL 375447, at * 1 (D.N.J. Jan. 20, 2013) (motion filed under Fed.R.Civ.P. 12(b) (2) and (3) did not terminate plaintiff's ability to file notice of voluntary dismissal). Likewise, the oppositions filed by various defendants to a motion to enter a default filed by plaintiff does not prevent plaintiff from filing and obtaining a dismissal under Rule 41(a) (1) (A) (ii). See Registry System International, Ltd. v. Hamm, 2011 WL 318690, at *5 (D.Colo. Jan. 28, 2011). Plaintiff therefore has the right to voluntarily dismiss this action without prejudice under Rule 41(A) (1) (a) (i). A final judgment shall therefore issue dismissing this action without prejudice.

/s/ Allison D. Burroughs
ALLISON D. BURROUGHS
United States District Judge